

EXHIBIT G

Declaration of Frederic Whitehurst

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
v.)	No. 13-CR10200-GAO
)	
DZHOKHAR TSARNAEV)	

**DECLARATION OF FREDERIC WHITEHURST
REGARDING MOTION TO CONTINUE TRIAL**

1. I have been engaged by the defense team in the pending case of *United States vs. Tsarnsev*. The Court approved funding for me to investigate issues arising from evidence collection, processing, examination, testing and conclusions in connection with the Boston Marathon bombing (BMB) scenes. My review is primarily focused on the FBI, which was the law enforcement agency responsible for processing BMB evidence. My expertise is in forensic chemistry and having worked at the FBI for many years as a forensic scientist I am also familiar with a wide variety of forensic disciplines and the laboratory protocols connected with those disciplines.

2. After the Court approved funding in late March, I began my work by examining photographs of evidence items that I was informed were at the FBI Quantico laboratory, which were the major source of evidence available to me. I also examined a small number of preliminary reports and other items.

3. Since April I have been provided additional lab reports in fits and starts and at different times. I have been provided with thousands of photographs and some videos depicting the crime scene. Together they do not appear to depict all of the evidence from the crime scene.

4. Beginning approximately six weeks ago, I received laboratory reports, laboratory operations manuals, quality assurance manuals, protocols, and CV's for various analysts. Buried

within elaborate folder structures, the laboratory reports generally are always clearly labeled. I note that the dates on many of the reports I have been reviewing reflect that the reports were created approximately a year ago, during the summer of 2013.

5. Much like the reports themselves, the quality assurance manuals, laboratory operations manuals, and protocols are labeled in such a way that I have had to take an inordinate amount of time to go through each file simply to determine what is in it. I have just about completed that process for the files that I have received, and am now going through the files in the different disciplines to determine if the reports in these areas of expertise reflect the standards and directions in the manuals and protocols.

6. One of my tasks is to determine if the examiners followed the protocols they provided, and also to determine if those protocols are valid. This is in keeping with a Rule 702 audit, in which we ask if there is enough data to support the opinions offered, if the protocol used was reliable and valid, and if the protocol was used in a reliable manner in examining and analyzing the evidence presented.

7. So far I have not seen any validation documentation for any of the protocols that I have reviewed. Attempting to find those documents among the documents I have received is extremely time consuming due to the complexity of the file labeling as well as the sheer number of documents that must be read before finding information needed. The forensic analysis of polymers in this case is a useful example. I find such analyses in the files marked "1C52_1 of 3" through "1C52_3 of 3". The name of the file gives me no reason to suspect that this is a report about forensic polymer analysis. As can be seen from the material presented, forensic polymer analysis is highly complex. There are many types of polymers, and the use of only one protocol to analyze any type of polymer presented would need to be validated for the different polymeric materials analyzed. Because polymer product formulations are changing due to the

environmental regulations as well as normal market place pressures, one cannot be sure that a protocol developed previously will continue to be valid for analysis of a new polymer formulation. A review of the Quality Assurance Manual for the FBI laboratory (which is found in a document entitled "FBI Laboratory, Definitions for the FBI Laboratory Quality Assurance Manual and FBI Laboratory Operations Manual" shows that the FBI laboratory believes that validation is a very important concept and should be very well documented by personnel in the FBI laboratory. However finding the document in which this definition exists means that I first look into the file that I received labeled " FBI Lab Reports 01". Inside that file are the following subfiles and documents: "2014-04-10", "2014-04-14", "2014-04-28", "2014-05-23", "2014-05-29 Lab Reports 415M-BS-2814367", "2014-06-04", "Final Fingerprint Report 19 of _(Greff)(0", "Final Trace Evidence Report on Minerology", "Knapp Comprehensive Report", and "r_Report of Exam-041614". I have to read all of these file, all of them, to understand what information has been provided, to determine the operation protocol of the FBI lab in this matter. But upon reading these files and all their subfiles I find mentions of the requirement of validation for protocols. The path that leads to this is under file "2014-04-10" where I see the following files" "4367 Lab Reports", "Anderson", "Quality System Doc 117013.09", and "Questioned Documents". Under "Quality System Doc 117013.09" I find "112013-09." To know to look in the file "Quality System Doc 117013.09" I have to read all of the material in all the file folders in file folder "2014-04-10". Under "112013-09" I find "LOM", "QAM", "QDU QM" and "QDU SOP's". So I read all of these file folders to find under the "LOM" file folder the document "LOM Binder 08-07-2013". Without having some idea what I am looking at I could spend hundreds upon hundreds of hours trying to understand where material is. As it is I expect to spend only hundreds of hours trying to make sense of the materials that have been provided. These materials are needed to determine simply if the FBI laboratory requires validation of its protocols, what that validation

means to the FBI laboratory, and whether it has been conducted on the work product found in the files marked "1C52_1 of 3" through "1C52_3 of 3". Validation of protocols is a central issue in a Rule 702 audit of a crime laboratory work product.

8. An analyst who concludes two polymer specimens originated from the same source has to show the protocols she has used along with studies validating those protocols. For example, it is one thing to opine that two batches of polymer contain at least some of the same components and it is another to opine that they came from the same source or sources of polymer with the same chemical composition. That means nothing unless the analyst is able and willing to explain just how large that polymer population is.

9. I have not begun to be able to review the validation studies for any of these disciplines. Even if the government has those validation studies and produces them, it will take a considerable amount of time to review them. If the testifying analyst cannot point to any validation studies, the trier of fact will not be able to determine the potential error rate.

10. A forensic audit of this work product is not something that can or will be done in a matter of a few hours. Further complicating this task is the sheer number of disciplines and reports involved in what is a very complex crime scene. A major hurdle in assessing the analysts' work is my inability, because of the way the material was provided to me, to quickly tie operations and quality assurance manuals to the analysts' work.

11. Another of my tasks while reviewing the analysts' reports is to determine whether the defense should hire experts in specific fields, such as metallurgy. However, I am unable to give an accurate recommendation unless and until I have been able to review the analysts' reports in light of the laboratory operations and quality assurance manuals. As an example, any toolmarks exams such as described in the March 20, 2013 report found in a file labeled "11130_13050788+AA+(Repaired)" (which label has nothing to do with toolmarks exams as far

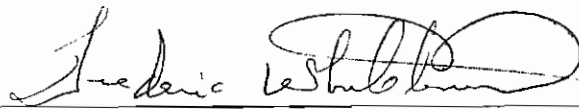
as I can discern) would require a metallurgical material analyst's review. Toolmarks exams have been found to be vulnerable to Rule 702 audit functions, in other words, lacking in standards and valid protocols.

12. I have also been asked to examine the integrity of the evidence-collection procedures at the BMB sites. As noted above, I have received thousands of photographs and separately dozens of handwritten photograph logs. Within the last week I was supplied drawings, diagrams and additional reports regarding scene preservation and evidence collection. The volume of these materials, necessary portions of which were only very recently provided to me, and the fact that I am simultaneously conducting the Rule 702 audit, makes me uncertain whether I will be able to address the integrity of the BMB evidence collection in any manner before trial is presently set to begin on November 3, 2014. In order to complete an audit of this crime scene analysis in a reasonable amount of time I would recommend employing an expert in this field.

13. Based on the initial review of the voluminous materials provided in the last six weeks, I can tentatively say that I could complete the Rule 702 audit and make recommendations to the defense team concerning whether to hire additional experts, and possible evidentiary challenges, by October 31, 2014. However, I have been advised that the government may yet provide additional discovery in regard to both evidence collection and forensic laboratory tests and procedures. Without knowing what may be provided in the future, I cannot say with any confidence when my work will be done.

I declare under penalty of perjury that the foregoing is true and correct, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

Executed on this 29 day of August, 2014, at Bethel, North Carolina.

A handwritten signature in cursive script, appearing to read "Frederic Whitehurst", written in black ink.

FREDERIC WHITEHURST